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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 000774-0002-101	
	Application Number 09/736,070 (Conf. No. 7720)	Filed December 13, 2000
	First Named Inventor George C. Crane	
	Art Unit 3691	Examiner Muriel. S. Tinkler

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant /inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 31,069
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

/Jeffrey H. Ingerman/
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August 27, 2012
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[x] *Total of 1 forms are submitted.

CONCISE ARGUMENT FOR WHICH REVIEW IS BEING REQUESTED

Summary of Office Action

Claims 1, 3, 6-14, 21, 22, 27-30, 35, 37, 40-43, 48, 52, 56 and 60-73 are pending in the above-identified patent application. Of those, each of claims 60 and 61 has been withdrawn from consideration as being drawn to a nonelected invention, and each of claims 62-73 has been withdrawn from consideration as being drawn to a nonelected species.

The Examiner has finally rejected claims 1, 3, 6-14, 21, 22, 27-30, 35, 37, 40-43, 48, 52 and 56 under 35 U.S.C. § 103(a) as allegedly being obvious from certain prior art allegedly admitted by applicant, in view of Pilipovic U.S. Patent 6,456,982.

Applicant's Invention

Applicant's invention, as defined by independent claim 1, is a method for analyzing price data, representing price in a financial system that varies over time. Each step of the method is carried out by a processor. According to the claimed method, price data is acquired over two different time durations each beginning at the same initial moment, with one duration being a multiple of the other duration. A respective range of the price data between respective minimum and maximum values during each respective duration is determined, and a ratio of those ranges is formed. When the ratio exceeds a square root of the aforementioned multiple, the processor concludes that the financial system is varying in a trend, and when the ratio is less than the square root of the multiple, the processor concludes that the financial system is congesting.

A similar method is defined by independent claim 48 and corresponding apparatus is defined by each of independent claims 22, 35, 52 and 56.

The References

Pilipovic discloses a system that uses a mathematical technique to generate and test projected data regarding a financial system.

The allegedly admitted prior art is a description by the applicant of the physical phenomenon known as Brownian motion.

Clear Error in the Rejection

Applicant believes that there are a number of arguments, any one of which supports a reversal of the Examiner's rejection. However, this Pre-Appeal Brief Request for Review is based on "clear error" with respect to a particular one of those arguments. Applicant summarizes the remaining arguments following this discussion of the "clear error," and applicant's reliance primarily on this single argument as to which clear error is believed to exist should not be taken (a) as a waiver by applicant of those other arguments, or (b) as rendering those arguments moot.

Applicant respectfully submits that there is "clear error" in the rejection as follows:

The Examiner argues as follows in the rejection:

1. Pilipovic shows that calculations can be made to predict prices and that those calculations can be based on Brownian motion.

2. The mathematical relationships in applicant's claims can be derived from the description of Brownian motion in the allegedly admitted prior art.

3. The allegedly admitted prior art also teaches that if a particle follows Brownian motion, its movements are erratic or haphazard, corresponding to one of the three "when" scenarios originally found in applicant's claims.

4. Only one of the three "when" scenarios needs to be in the art, even though they are recited conjunctively (i.e., with an "and").

5. Therefore, applicant's claims are obvious.

The error in the Examiner's deductive reasoning cannot be clearer. The Examiner is relying on the alleged disclosure in the allegedly admitted prior art that meeting a certain mathematical relationship is indicative of a system varying erratically, coupled with the Examiner's position (expressed in an earlier rejection) that only one of the "when" scenarios in applicant's claims needs to be shown in the prior art to render the claims unpatentable, even though the "when" scenarios are separated by "and" rather than by "or."

However, even if the Examiner is correct that only one of the "when" scenarios needs to be shown, the "when" scenario relied on by the Examiner was deleted from the claims in the reply filed October 1, 2009. Notwithstanding previous reminders of that amendment by applicant, the Examiner has made no attempt to show that even one of the other two "when" scenarios remaining in the claims is shown or rendered obvious by the prior art.

Thus, the Examiner is basing the rejection on a claim limitation that is no longer in the claims, rather than on the current language of the claims. The Official Gazette notice (1296 OG 67, July 12, 2005) establishing the Pre-Appeal Brief Conference Pilot Program (extended indefinitely by the notice at 1303 OG 21, February 7, 2006) set forth a standard of "clear error" as the basis for a Pre-Appeal Brief Request for Review. Although that notice did not define a "clear error," basing a rejection on a nonexistent claim limitation must be a "clear error," and the rejection should be withdrawn for that reason alone.

Applicant's Other Arguments

In the December 16, 2011 reply, applicant was already trying to focus the Examiner on the clear error described above. Accordingly, applicant set forth other

arguments in summary form only. The Examiner in the final rejection has characterized those arguments as "moot." However, it was not applicant's intention to waive those other arguments, and applicant repeats them here:

1. Pilipovic teaches away from the use of Brownian motion to analyze financial systems. Contrary to the Examiner's assertion that applicant has not shown where Pilipovic does so, applicant has on at least two previous occasions discussed that Pilipovic mentions the use of Brownian motion to analyze financial systems only as one of several techniques allegedly prior to Pilipovic. Pilipovic then goes on to say, at column 4, lines 57-58, "Unfortunately, the above-described methods have drawbacks that have not been solved in the prior art," and then goes on to teach her own technique, which has nothing to do with Brownian motion. Thus, while Pilipovic discloses the use of Brownian motion to analyze financial systems as being part of the pre-Pilipovic prior art, the fact that the Examiner is using Pilipovic as part of an obviousness rejection means that the teaching away at column 4 prevents the prior art described but disparaged by Pilipovic from being combined with other Brownian motion art in the financial arena.

2. As discussed above, the "when" scenarios in applicant's claims are conjunctive (are connected by "and" rather than by "or") and therefore both of them need to be in the references to defeat patentability of the claims. In the final rejection, the Examiner misinterpreted this argument as an argument that all limitations need to be in one reference, but that is not the argument. The argument is that regardless of the number of references used, both of the "when" scenarios need to be in the prior art; it is not enough to show only one of the "when" scenarios.

3. Neither Pilipovic nor the allegedly admitted prior art describes the claimed particulars of the claims related to time periods. The Examiner again points to

column 7, lines 50-62, column 10, lines 35-59, and claim 41 of Pilipovic as showing those particulars, suggesting that applicant has not acknowledged those citations. However, in the previous reply, not only did applicant acknowledge those citations by the Examiner, applicant also reproduced in the previous reply the cited passages from Pilipovic. As previously noted by applicant, it is clear from reading those passages that they have nothing to do with the claimed particulars of the claims related to time periods. The only thing that comes close to relating to time at all is the reference in claim 41 to historical data. But there is nothing in any of the passages about the particulars claimed by applicant.

Thus, to reiterate, applicant does not waive the foregoing arguments and reserves the right to raise them again in greater detail in any subsequent prosecution of this application.

Conclusion

Applicant respectfully submits that in view of the "clear error" discussed above, and without regard to the validity of any of the other arguments summarized above, claims 1, 3, 6-14, 21, 22, 27-30, 35,37, 40-43, 48, 52 and 56 are patentable over the combination of Pilipovic and the allegedly admitted prior art, and that this application is in condition for allowance.

Respectfully submitted,

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